

PATENTABILITY ARGUMENTS

A. Response to 35 U.S.C. §102 (b) Rejections

In item 7 the Examiner has objected to claims 1-3, 5, 7 and 9-11 as being anticipated by U.S. Patent 3,386,456 issued to Walker under 35 USC §102 (b). For the Examiner to maintain a rejection under 35 U.S.C. §102(b) every element of Applicant's invention must be taught by the cited reference.

The Examiner states that Walker provides base support beam 24, two V-shaped sides, lower support beam 23 joined to an upper support beam 22 by connection means 25 and retractable anchor means in the form of stakes 49 which may be retracted flush with support beam 24. Applicant respectfully disagrees. Walker teaches a portable shelter having two ends, each end comprising a plate and at least three legs pivotally coupled to the plate, at least six interchangeable ribs connecting the two ends via the legs and a collapsible spike coupled to a leg of each side for anchoring the shelter in the ground.

Applicant has amended claim 1 to include the limitations of claim 8 consequently the sun shielding device of the present invention comprises, a structural frame having a base support beam and two sides, wherein the two sides comprise a top support beam and a lower support beam, the top support beam and the lower support beam joined together at their ends by an adjustable angle hinge, wherein the sides are affixed to one another by the base support beam such that the sides are positioned parallel to each other and about 90 degrees to the base support beam. In addition, Applicant has amended claim 1 to include the limitation that said top support beams and or said lower support beams may be adjusted independently.

In response to the Examiner's rejection and in view of the amendment it is now clear that element number 24 in Walker is not similar to nor does it perform the same function as the base support beam of Applicant's invention. In particular element 24 is a leg provided on each side of the device for receiving the ends of rib 47. The base support beam of Applicant's invention is not part of the sides but connects the sides one on either end of the base support beam. Further the base support beam maintains the sides parallel to one another and about 90 to the base support beam. Element 24 does not maintain the sides of the portable shelter parallel to one another or at about 90 to the leg. Consequently, the base support beam of Applicant's invention is not taught by Walker and in view of this fact the Examiner's argument can no longer support a rejection of claims 1-3, 5, 7 and 9-11 based 35 USC §102(b). Therefore, Applicant respectfully requests that the Examiner remove this rejection.

The Examiner next equates element 23 with Applicant's lower support beam, element 22 with Applicant's upper support beam and element 25 with Applicant's adjustable angle hinge. The Examiner states that these elements 22, 23 and 25 are all joined forming V-shaped sides. Element 23 is not similar to Applicant's lower support beam since the lower support beam is in contact with the relatively flat surface. In figures 1, 2, 4, and 10 it is clear that element 23 is positioned above the relatively flat surface. Elements 22, 23 and 25 do not and cannot form V-shaped sides like Applicant's invention because of the configuration of plate 25 and the attachment points of legs 22 and 23 to the plate. In reality the leg connections to the plate form an actual U-shape not a V-shape. These legs are pivotally coupled to one another by plate 25 in a fixed angle configuration held in the open position by latch struts 33 and 34. Walker's device provides only two options for the user either open or closed. There is no capability of adjusting the angle when opened. Applicant's invention provides an adjustable angle hinge on either side that allows the user to select a desired orientation of the lower and top support beams prior to use. Consequently, the adjustable angle hinge of Applicant's invention is not taught by Walker and in view of this fact the Examiner's argument can no longer support a rejection of claims 1-3, 5, 7 and 9-11 based 35 USC §102(b). Therefore, Applicant respectfully requests that the Examiner remove this rejection.

In item 8, the Examiner states that claims 1, 3, 5, 7, 8, 12 and 13 are anticipated by U.S. Patent 3,404,915 issued to De Souza Filho under 35 USC §102 (b). It should be noted that the copy of the de Souza Filho patent provided by the Examiner is missing page 5, columns 3 and 4 including a portion of claim 1. This page appears blacked out possibly due to a copy malfunction when creating the pdf file. An attempt to acquire another copy through independent sources has had the same result. The Examiner stated that his attempts to obtain the missing page were also unsuccessful.

The Examiner states that De Souza Filho provides base beam 34, lower support frames 18 connected to upper support frames 33 and 62 with connecting means 50 and 51 and removable head and neck rest 16. Applicant respectfully disagrees. De Souza Filho teaches a beach chair and cot comprising five articulating, rectangular sections held rigid by, elements 34 and 35 in the second section, elements 70 and 70' in the third section, element 89 in the forth section, element 100 in the fifth section and element 16, in the first one section. The rectangular pillow 16 is affixed between two parallel rails 18 by long bolts 20 and secured by nuts 21 and washer 22 maintaining this section in a rigid conformation.

In response to the Examiner's rejection and in view of the amendment it is now clear that element number 34 in De Souza Filho is not similar to nor does it perform the same function as the base support beam of Applicant's invention. In particular element 34 is one of two cross bars designed to maintain the necessary rigidity of the second section

so that it may perform the function of a seat back when the device is configured as a seat (see Figure 4). The base support beam of Applicant's invention does not provide rigidity to the top support beams in fact it allows the user to adjust either one of the top support beams and or either one of the lower support beams independently. This provides much more flexibility for the user when not angled directly into or away from the sun. Clearly, parallel rails 18 cannot be adjusted independently from each other due to the presence of long bolts 20 nor can parallel rails 33 be adjusted independently due to the presence of cross bars 34 and 35. Consequently, the base support beam of Applicant's invention is not taught by De Souza Filho and in view of this fact the Examiner's argument can no longer support a rejection of claims 1, 3, 5, 7, 8, 12 and 13 based 35 USC §102(b). Therefore, Applicant respectfully requests that the Examiner remove this rejection.

The Examiner further states that De Souza Filho provides a removable head and neck rest. Applicant respectfully disagrees. In fact the rather rectangular pillow is securely affixed within the parallel rails 18 by two long bolts 20 extended through bolt holes 19 in the rails 18 and secured by nuts 21 and washers 22. To remove the rectangular pillow the device would have to be disassembled which does not comply with the definition of removable as shown in Figure 1D. Consequently, the removable head and neck rest of Applicant's invention is not taught by De Souza Filho and in view of this fact the Examiner's argument can no longer support a rejection of claims 1, 3, 5, 7, 8, 12 and 13 based 35 USC §102(b). Therefore, Applicant respectfully requests that the Examiner remove this rejection.

Applicant's amendments to claim 1 have introduced the limitation of the side netting between the top support beams and the lower support beams not previously incorporated into this claim. The invention of De Souza Filho does not teach the use of side netting between the articulated rectangular sections and in view of this fact the Examiner's argument can no longer support a rejection of claims 1, 3, 5, 7, 8, 12 and 13 based 35 USC §102(b). Therefore, Applicant respectfully requests that the Examiner remove this rejection.

In item 9, the Examiner has rejected claims 1-5 and 7-10 as being anticipated by U.S. Patent 3,845,170 issued to Andersen under 35 U.S.C. §102(b). The Examiner states that Anderson provides structural frame 12 and 14, base support beam 17, two V-shaped sides comprised of bottom support beams 18 and 20 and top support beams 44 and 45 joined by hinge connecting means 50 a canvas cover means 51 having side portions 53 and 53" and stakes 76. Applicant respectfully disagrees. The Andersen invention is a combination partial or full tent device including a lower frame, a means for retracting the rear of said lower frame, an upper frame wherein said lower frame and said upper frame may be provided in a storage position or an operative position and a covering.

In response to the Examiner's rejection and in view of the amendment it is now clear that element 72 of Anderson's device, the collapsible brace means, provides the user with only two options, collapsed wherein the device is in its storage position or extended wherein the device is in its operative position. Applicant's invention provides an adjustable angle hinge that allows the user to adjust either one of the top support beams and or either one of the lower support beams independently. This provides much more flexibility for the user when not angled directly into or away from the sun. Consequently, the adjustable angle hinge of Applicant's invention is not taught by Anderson and in view of this fact the Examiner's argument can no longer support a rejection of claims 1-5 and 7-10 based 35 USC §102(b). Therefore, Applicant respectfully requests that the Examiner remove this rejection.

B. Response to 35 U.S.C. §103 (a) Rejections

The Examiner has rejected claims 6 and 12-14 under 35 USC §103(a) as being unpatentable over Anderson and in view of the Examiner's Official Notice. For the Examiner to maintain a rejection under 35 U.S.C. §103(a) the Examiner must show that there was some suggestion or motivation to combine the references cited, that there would have been a reasonable expectation of success in combining the teachings of the cited references and that the proposed combination of cited references teach all of the claimed limitations of Applicant's invention.

The Examiner states that netting would have been an obvious material choice for one skilled in the art for sides 53 and 53' as netting is well know cover material in the tent arts particularly for side walls. In addition the Examiner states that it would have been obvious to one of ordinary skill in the art at the time of the invention that the head and neck rest could have been provided in combination with the device of Anderson. Applicant respectfully disagrees. If these elements are so well known to one skilled in the art it is difficult to believe that the Examiner would not be able to provide at least one reference of such applications. It is important to note that it was necessary for the Examiner to take Official Notice of such obvious applications when none of the currently cited references, Anderson, De Souza Filho and Walker describes such obvious elements.

In response to the Examiner's rejection Anderson fails to teach or disclose an adjustable angle hinge that allows the user to adjust the top support beams and lower support beams independently of each other. Absent this the proposed combination of Anderson and the Examiner's Official Notice does not teach all of the claim limitations of Applicant's invention. Consequently, the Examiner's argument can no longer support a rejection of claims 6 and 12-14 based 35 USC §103(a). Therefore, Applicant

respectfully requests that the Examiner remove this rejection.

REMARKS**C. Claim Amendments**

Applicant has amended claim 1 to include the limitation of claims 3, 4, 6 and 8 to more clearly define Applicant's invention. The limitations of claim 4 more clearly defined the phrase "to said structural frame" so this language was deleted. In order to more clearly define the connecting means as provided in the limitations of claim 3 Applicant replaced the phrase "a connecting means" with "an adjustable angle hinge". The term "hinge" can be found in the definition section of the specification on page 4 lines 24-29 in the definition of "connecting means". And the terms "adjustable angle" can be found throughout the detailed description under the heading of "Connecting Means" where a number of means for providing an adjustable angle hinge are described. More specifically on page 16 line 11, and 22, page 18 line 7 and page 19 line 27. Further Applicant has amended claim 1 to include the phrase "and wherein said top support beams and said lower support beams may be adjusted independently". This independent adjustment is supported on page 19 lines 1-6. Finally, claims 10, 11, 13 and 14 have been amended to correct their dependency.

To the best of their knowledge Applicant's believe that the amendments to the specification do not add new matter.

D. Response to Drawing Objections

In item 2, the Examiner objects to the headings "Figure 1" and "Figure 1(cont.)". As per the Examiner's request Applicant has remove the "Figure 1" and "Figure 1 (cont.)" headings from the figures. Consequently, Applicant's request that the Examiner remove this objection.

In item 3, the Examiner objects to the absence of reference "10" mentioned in the description of the specification. As per the Examiner's request Applicant has inserted the reference "10" into the figures. Consequently, Applicant's request that the Examiner remove this objection.

In item 4, the Examiner states that the drawing must show the headrest removably affixed to the device. Applicant directs the Examiner to Figure 1D element 26 showing the headrest removed from device 10. Consequently Applicant is in compliance with 37 C.F.R. 1.83(a) and respectfully requests that the examiner remove this rejection.

To the best of their knowledge Applicant's believe that the amendments to the specification do not add new matter.

E. Response to Description of Figures Objections

In item 5, the Examiner has objected to the brief description of the drawings section because the descriptions of the Figures do not seem to agree with the views shown. As per the Examiner's request Applicant has amended the Description of the Figure section of the specification so that the descriptions agree with the views shown.

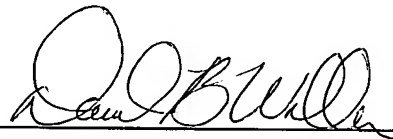
To the best of their knowledge Applicant's believe that the amendments to the specification do not add new matter.

CONCLUSION

In view of the above arguments present Applicant has amended the claims and demonstrated that the invention as claimed satisfies the statutory requirements for patentability. Applicant's respectfully request that the Examiner issue an allowance of the claims.

Respectfully submitted,

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DRAWING AMENDMENTS

The drawings have been amended as requested by the Examiner and new substitute drawing sheets are provided. Applicant respectfully requests that the Examiner replace the drawings in the specification with the new substitute drawings.